

RECEIVED
14 JAN 16 AM 10:47
HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
Anchorage School District,) DOCKET NO. TSCA-10-2014-0012
Anchorage, Alaska,) **CONSENT AGREEMENT AND**
Respondent) **FINAL ORDER**

I. AUTHORITIES

1.1 This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2 The Administrator has delegated the authority to issue the Final Order contained in Part V of the CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3 Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Anchorage School District (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3 Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Subpart D of 40 C.F.R. Part 761 regulates storage and disposal of PCBs by any person.

3.2 Respondent is a municipal school district, and is a “person” as defined at 40 C.F.R. § 761.3.

3.3 At all times relevant to the alleged violation, Respondent owned and operated a maintenance facility located at 1301 Labar Street, Anchorage, Alaska (“District Facility”). The District Facility is a “facility” as defined at 40 C.F.R. § 761.3.

3.4 Under 40 C.F.R. § 761.3, “PCB waste” includes PCBs and PCB Items that are subject to the disposal requirements of Subpart D of 40 C.F.R. Part 761. Pursuant to 40 C.F.R. § 761.65, PCB Items with PCB concentrations equal to or greater than 50 parts per million

("ppm") stored for disposal are subject to the storage for disposal regulations at 40 C.F.R.

§ 761.65.

3.5 40 C.F.R. § 761.65(a)(1) requires PCB waste to be disposed of in accordance with Subpart D of 40 C.F.R. Part 761 within one year from the date it was determined to be PCB waste and the decision was made to dispose of it.

3.6 On or around September 11, 2011, Respondent removed from use ballasts containing or contaminated with PCBs in concentrations equal to or greater than 50 ppm, marked them with September 11, 2011 as the removal from service date, and stored them for disposal at the District Facility.

3.7 On or around September 27, 2012, US Ecology Idaho, Inc. received a shipment of PCB-contaminated and/or PCB-containing material, including the ballasts, from Respondent for disposal.

3.8 On October 2, 2012, the ballasts were disposed of by Veolia Environmental Services, for US Ecology Idaho, Inc.

Alleged Violation

(Storage of PCB Waste for Disposal for More than 1 Year)

3.9 The ballasts with the removal from service date of September 11, 2011, and stored for disposal at the District Facility contained PCBs at concentrations equal to or greater than 50 ppm and therefore are subject to the storage for disposal requirements at 40 C.F.R. § 761.65.

3.10 Respondent stored PCB waste for disposal for more than one year, in violation of TSCA and 40 C.F.R. § 761.65(a)(1).

IV. CONSENT AGREEMENT

4.1 Respondent admits the jurisdictional allegations contained in this CAFO.

4.2 Respondent neither admits nor denies the specific factual allegations set forth in this CAFO.

4.3 As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violation, and Respondent's ability to pay, the effect of the penalty on Respondent's ability to continue to do business, any history of prior such violations, and Respondent's degree of culpability, as well as other relevant factors.

4.4 EPA has determined and Respondent agrees that an appropriate penalty to settle this action is one thousand two hundred dollars (\$1,200).

4.5 Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6 Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.7 Respondent must serve photocopies of the check described in Paragraph 4.6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Tristen Gardner
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.8 If Respondent fails to pay the penalty assessed by this CAFO in full by the due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

4.9 Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), if Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.10 The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11 The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12 Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.13 Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2), 15 U.S.C. § 2615(a)(2).

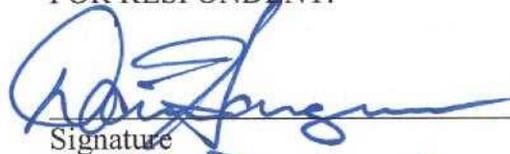
4.14 The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15 The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

12/30/13

FOR RESPONDENT:


Signature

Print Name:

Darin Hargraves

Title:

Director of Maintenance
Anchorage School District

DATED:

1/8/2014

FOR COMPLAINANT:


Signature

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

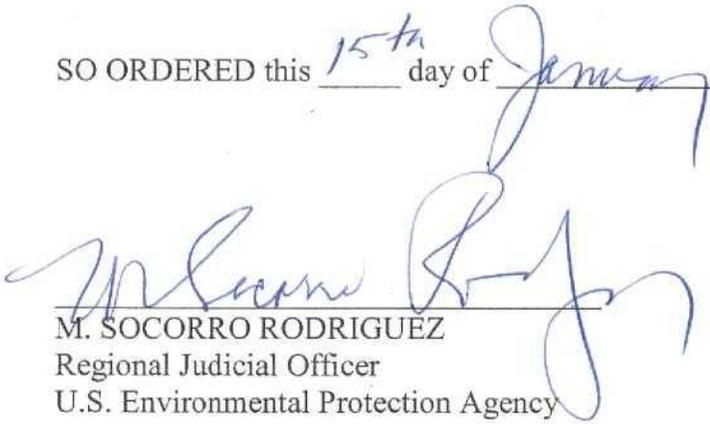
V. FINAL ORDER

5.1 The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2 This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violation alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

5.3 This Final Order is effective upon filing.

SO ORDERED this 15th day of January, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Anchorage School District, Docket No.: TSCA-10-2014-0012**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

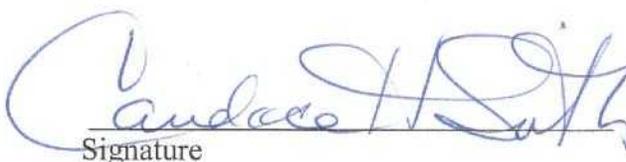
The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Darin Hargraves, Director
Maintenance & Operations
Anchorage School District
1301 Labar Street
Anchorage, Alaska 99515-3517

DATED this 10th day of January 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

